

Minutes of the **Bylaw Review Committee** meeting held
March 20, 2014
Town Clerk's Conference Room, Town Hall, 455 Concord Avenue
7:30 PM AM

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Attendees: Charles Hamann, Chair, Mark Thurber, Raymond Miyares, Ellen O'Brien Cushman (ex-officio)

Other attendees: Bob McGaw, Captain Hoerr, Belmont Police

Agenda:

Annual Town Meeting Articles – documents attached

Citizen Petition To Add Yard Sales Bylaw offered by Mr. Ganak, as assisted by Ray. Unanimous Vote as to form and placement. Now called Private sales to encompass many forms of the sale.

Correction of Clerical Error in the Criminal History for Certain Licensees – correction as provided by Captain Hoerr, form and placement. Unanimous Vote

Animals Bylaw Revision to comply with revisions in State Law – drafted by Town Counsel, edited by Committee, still some information required - vote at next meeting.

Lone Tree Hill Belmont Conservation Land Management – New Bylaw – drafted by Town Counsel, as to form and placement. Unanimous Vote

Minutes of the meeting of November 20, 2013 approved unanimously

Meeting adjourned at 9:20 PM

Respectfully submitted,
Ellen O'Brien Cushman

2014 Belmont Annual Town Meeting Warrant

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Segment A: Belmont High School at 7 pm
Segment B: Chenery Middle School at 7 pm

ARTICLE 10 Use of Town Property

§ 100-100: Lone Tree Hill Conservation Property

§ 100-101 Intent and Purpose.

This Article is adopted for the purpose of preserving and protecting the Lone Tree Hill property (the "Property"), formerly known as the McLean Open Space, and currently managed by the Town of Belmont Land Management Committee (the "Committee"). By preserving and protecting the Property, this Article promotes the public welfare by ensuring the safety of visitors, protecting the land and resident wildlife, and preserving passive recreation spaces within the Town consistent with the Conservation Restrictions on file in the Middlesex County South Registry of Deeds. This Article shall be interpreted in furtherance of the intents and purposes described in this subsection.

Comment [A1]: Ellen, after discussing it with George, I don't think we need the book and page numbers here, so I left them out.

Comment [A2]: Based upon George's discussion with Ray, we either need the name and plan number, book and page for reference or not.

§ 100-102 Permitted Uses.

- A. Hours. The public shall be permitted to use the Property for passive recreation on designated trails from dawn until dusk. The public shall observe seasonal closings.
- B. Dogs. The public shall be permitted to bring dogs on to the Property, provided that those dogs remain on leashes measuring 6 feet or less. Members of the public shall remove all wastes created by their dogs on the Property.
- C. Bicycles. The public shall be permitted to ride bicycles on the Property, provided that bicyclists must:

- (1) Only use designated trails;
- (2) Permit pedestrians to have the right of way on designated trails; and
- (3) Use appropriate caution and speed on designated trails to promote safe access by all users.
- (3)D. Other Uses Permitted by the Committee. The Committee may permit the public to use the Property in other ways with prior Committee permission.

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§ 100-103 Prohibited Uses.

- A. Trails. The public shall not deviate from trails on the Property.
- B. Animals and Natural Materials. The public shall not physically disturb animals, vegetation, or natural materials on the Property in any manner.
- C. Trash. The public shall not litter on the Property and shall remove all items brought on to the Property upon departure.
- D. Other Prohibited Uses. The public shall not use any of the following materials or engage in any of the following activities on the Property:

- (1) Use of motorized vehicles;
- (2) Dumping of trash or other refuse which may cause harm to the Property;
- (3) Use, enjoyment (?), or creation of fires;
- (4) Smoking;

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- (5) Use of alcohol;
- (6) Camping;
- (7) Hunting; or
- (8) Ball playing or other active recreation, including but not limited to baseball, soccer, football, or Frisbee;
- (9) Throwing of stones, snowballs, sticks, or other missiles;
- (10) Flying kits or other objects; or
- (11) Shooting with or use of an airgun, bow and arrow, slingshot, or other similar device.
- (8) ~~Here insert the language about not throwing or propelling projectiles or missiles, etc (like archery)~~

§ 100-104: Enforcement.

The noncriminal disposition of violations of this article is hereby authorized in accordance with the provisions of MGL c. 40, § 21D ("§ 21D").

This is the standard per the rest of our General Bylaws, just "codified" – should this be used instead?

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In addition to the provisions for enforcement set forth elsewhere in this Section, the provisions of this Section and any regulations promulgated thereunder may also be enforced by non-criminal disposition as provided in MGL c. 40, § 21D ("Section 21D"). The penalty for such violation shall be \$300 for each offense. Each day or part thereof shall constitute a separate offense.

- (1) "Enforcing person" as used in this subsection shall mean any police officer of the Town, the Director of Public Works and any other Town employee designated by the Board of Selectmen as an enforcing person.
- (2) An enforcing person taking cognizance of a violation of this Section or any rule or regulation adopted hereunder shall give the offender a written notice to appear before the Clerk of the District Court having jurisdiction thereof for the noncriminal disposition thereof in accordance with the provisions of § 21D. The provisions of §21D are incorporated herein by this reference.

Violations of the above regulations shall be punishable by a fine of \$100 for each offense.

§ 10-105. Severability ~~The Town of Belmont Police Department may enforce this Article by non-criminal disposition as provided in M.G.L. c. 40, § 21D. Is each day a separate offense also? Maybe we should use the language for 21D in other parts of the General Bylaws?~~

Comment [A3]: Ellen – I spoke with George and he suggests taking out this severability provision. He says he'll explain why when he speaks with you next.

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The invalidity of any parts of this bylaw shall not affect the validity of the remaining parts. Do we need any severability clause?

*Amend
Criminal History
for certain licenses*

60-905 E (2) The entire paragraph should read:

In determining whether to recommend the applicant as fit for the License, the officer shall consider whether any entry in the records constitutes an automatic disqualification from the occupation. The officer ~~shall~~ also consider how the following convictions or pending criminal cases bear specifically upon the applicant's fitness or ability to serve in the occupation for which he or she is seeking a license:

for

- (a) -any felony,
- (b) any offense related to unlawful sexual conduct,
- (c) the distribution or possession with intent to distribute a controlled substance,
- (d) any misdemeanor involving as an element the use or threatened use of force,
- (e) any misdemeanor involving the unlawful taking or receipt of property, or attempts to do so, and
- (f) any other relevant crime

~~which bears more specifically upon the applicant's fitness or ability to serve in the occupation for which he or she is seeking a license.~~

In addition, the officer conducting the check shall consider whether the person is registered as a sex offender.

60-905F(3) should read:

The Licensing ~~a~~Authority will consider the information provided pursuant to this Section ~~by law~~ and other information relevant to the applicant's fitness, ~~to whether to issue the license.~~

Citizen Petition – Strike Residential Snow Removal, Section 60-800 Subsection I, of General Bylaws

To see if the Town will vote to amend Section 60-800 of the General Bylaws by:

- (a) striking Subsection I therefrom in its entirety;
- (b) redesignating Subsection J thereof as “Subsection I” and amending said Subsection as follows:
 - I. In addition to the provisions for enforcement set forth elsewhere in this Section, the requirements of Subsections A, B, D(2), E(2), G and H of this Section and any regulations adopted thereunder may also be enforced by noncriminal disposition as provided in MGL c. 40, § 21D (“§ 21D”). The penalty for such violation shall be \$300 for each offense. Each day or part thereof shall constitute a separate offense.
 - (1) An Enforcing Person taking cognizance of a violation of Subsection A, B, D(2), E(2), G or H or any rule or regulation adopted thereunder shall give the offender a written notice to appear before the Clerk of the District Court having jurisdiction thereof for the noncriminal disposition thereof in accordance with the provisions of § 21D. The provisions of § 21D are incorporated herein by reference.
 - (2) “Enforcing Person,” as used in this Subsection, shall mean any police officer of the Town, the Director of Public Works and any other Town employee designated by the Board of Selectmen as an enforcing person.

or act in anyway thereon.

Private Sales Bylaw

To see if the Town will vote to amend Chapter 60 of the General Bylaws by amending Article 9 by adding the following new section

Article 9

§ 60-910 Private Sales

A. Purpose

The purpose of this Section is to continue to allow private citizens, civic groups and neighborhood groups to conduct private sale events known variously as garage sales, yard sales, tag sales, driveway sales, and moving sales (collectively referred to herein as "Private Sales"), so long as they are carried out in conformity with the Town's bylaws and is respectful of neighbors. Neighboring residents' willingness to tolerate these sales cheerfully can be expected only if they take place infrequently.

B. Application

- (1) Any person or group intending to hold a Private Sale shall obtain a permit therefor from the Town Clerk. No more than three permits per calendar year may be issued for Private Sales at a single address. Copies of the issued permit shall be sent by the Town Clerk to the Police Department.
- (2) Any person or group holding a Private Sale shall take appropriate steps to avoid creating traffic congestion, unsafe parking conditions, unreasonable noise or other neighborhood nuisance.
- (3) A single Private Sale may be held over the course of a Saturday and Sunday in a single weekend. Sale hours shall not commence before 8:30 a.m. and shall end each day by 5:30 p.m. All unsold items or objects from the sale shall be stored out of public view by 6:00 p.m.
- (4) All signs erected or posted in connection with a Private Sale shall be promptly removed at the end of the sale .
- (5) If it is substantiated that a person or group is holding a Private Sale without a permit issued pursuant to this Section the Belmont Police are authorized to order the sale to cease immediately. Thereafter, any person or group attempting to reestablish a Private Sale at the same address during the calendar year without a permit shall be subject to a fine of \$300 for each violation.
- (6) The Belmont Police are authorized to enforce this Section by issuing non-criminal citations as provided in M.G.L. c. 40, § 21D. The penalty for any violation of this Section shall be \$50 for each offense.

or act in anyway thereon.

ARTICLE 2
Animals

§ 60-200. Pets and other animals.

- A. Licensing of dogs and cats. No person shall own or keep a dog or cat, six months of age or older, within the Town unless a license for such dog or cat is obtained from the Town Clerk. The license period shall be from January 1 through December 31; provided, however, that all applications for license renewals shall be submitted by March 15 of each year, or the licensee may be subject to late fees. Non-refundable license and late fees shall be established from time to time by the Town Clerk, unless Town Meeting approval is required pursuant to MGL c. 140, § 139 or other applicable law. License fees for dogs and cats owned or kept by residents who are age 60 or older shall be at a discounted rate of at least 25% less than the established fee. All license fees shall be waived for dogs and cats that serve as service animals as defined by the Americans with Disabilities Act or regulations promulgated thereunder. Not more than three dogs over three months of age shall be kept in any household without complying with the kennel licensing provisions set forth in § 60-205. All dogs and cats are required to wear their license tags at all times.
- (1) No dog or cat six months of age or older shall be licensed unless a valid rabies vaccination certificate is presented to the Town Clerk at the time of licensing.
 - (2) No dog or cat six months of age or older shall be licensed unless there is presented to the Town Clerk at the time of licensing either:
 - (a) Proof that the dog or cat has been spayed or neutered;
 - (b) A statement signed by a veterinarian stating why spaying or neutering has been delayed; or
 - (c) A statement signed by the owner or keeper of the dog or cat that a decision has been made not to spay or neuter the dog or cat.
 - (3) A special breeder's license shall be obtained for any dog or cat with respect to which a statement is presented that a decision has been made not to spay or neuter pursuant to § 60-200(A)(2)(c).
- B. The owner of any dog or cat that is sold or given away, or whose custody is otherwise transferred, to any other resident of the Town shall obtain from the Town Clerk and furnish to such other resident a copy of this section of the General Bylaws or a summary thereof.
- C. No person who owns, keeps or controls a dog shall allow the dog to run free when not restricted to the premises of said person, except as permitted by the Board of Health. Except as otherwise provided in this Section, such dogs shall be leashed and curbed when off such premises.
- D. Removal of feces.
- (1) Each person who owns, keeps or controls a dog within the Town shall remove and dispose of any feces left by such dog on any sidewalk, street, park or other public area or

on any private property that is not owned or lawfully occupied by such person.

- (2) No person who owns, keeps or controls a dog within the Town shall permit such dog to be on any sidewalk, street, park or other public area unless such dog is accompanied by a person carrying a device that is suitable for picking up and containing feces, unexposed to such person and to the general public.
 - (3) For purposes of this Subsection, feces may be disposed of only at a place suitable and regularly reserved for the disposal of human feces or otherwise designated as appropriate by the Board of Health.
 - (4) Paragraphs (1), (2) and (3) of this Subsection shall not apply to a dog accompanying any person who, by reason of a handicap, is physically unable to comply with its requirements.
- E. No person within the Town shall possess, maintain, propagate, cultivate or deal in wild or exotic animals within the meaning of MGL c. 131, § 23, unless notice thereof has been filed with the Board of Health and all permits required by said § 23 or otherwise have been obtained.
- F. No person within the Town shall feed any wild animals, including, without limitation, ducks, geese and raccoons, or any homeless dogs or cats, except birds through freestanding bird feeders or bird feeders attached to a private residence. Persons feeding their own domestic animals shall do so only in a sheltered space inaccessible to wild or roaming animals. This Subsection shall not apply to the feeding of homeless dogs or cats if done in a sheltered place inaccessible to wild or roaming animals with the express purpose of befriending the dog or cat in order later to have it vaccinated, spayed or neutered, and ultimately adopted.
- G. Nuisance or Dangerous Dogs or Other Animals.
- (1) No person shall permit any dog, cat or other household pet that by biting, barking, howling, scratching or crying, or in any other manner, disturbs the peace and quiet of any neighborhood, destroys private property, endangers the safety of any person, or otherwise acts as a nuisance or dangerous dog as defined by MGL c. 140, § 136A.
 - (2) The Animal Control Officer, or any other Town officer tasked with the enforcement of this Section, shall respond to complaints and reports of a violation of Paragraph (1) of this Subsection
 - (3) All bites by dogs, cats, other domestic animals or wild or exotic animals shall be reported to the Board of Health and the Animal Control Officer by the person bitten or by the owner or keeper of the animal, as soon as possible after the incident.
 - (4) Any person, including the Animal Control Officer, may make a complaint to the Board of Health, the Town's Hearing Authority pursuant to MGL c. 140, concerning a nuisance or a dangerous dog as defined by MGL c. 140, § 136A. Upon the receipt of such a complaint, the Board of Health shall conduct a public hearing to gather evidence and testimony with respect to the allegation made in the complaint. At the close of the public hearing and after deliberation, the Board of Health may dismiss the complaint, or deem the dog a nuisance or dangerous dog. If the Board of Health deems the dog a nuisance or a dangerous dog, it may order any of the remedies available to it under MGL c. 140,

§ 157.

- H. The operator of a motor vehicle that strikes and injures or kills a dog or cat within the Town shall report such incident to the owner or keeper of such dog or cat or to a police officer of the Town.
- I. Except as the Board of Health may otherwise permit, no dogs, except those dogs that serve as service animals as defined by regulations issued pursuant to the American with Disabilities, 28 CFR § 35.104, will be allowed in the following areas of the Town: all cemetery land, all public school playgrounds and athletic fields and all Recreation Department playgrounds and athletic fields. Nor may any dog be allowed inside food establishments, retail businesses or public buildings.
- J. Violations of this Section shall be disposed of, in the discretion of the Board of Health, either in the manner provided in § 40-220E or, if applicable, pursuant to the provisions of MGL c. 140, § 173A. For all violations of this Section other than violations of the licensing subsections, a noncriminal citation will be issued on the following schedule: first offense, written warning; second offense, \$25; third offense and each succeeding offense occurring within a twelve-month period, \$50. Any violation of the licensing subsections shall result in a fine of \$50 per such violation and, for violations continuing 30 days past licensing deadlines, an additional fine of \$100 per such violation. The fines specified in this Subsection shall be in lieu of the schedule of fines specified in MGL c. 140, § 173A.

§ 60-205. Kennels.

- A. Definitions. As used in this Section, the following words and terms have the following meanings:

KENNEL — A pack or collection of dogs on a single property, including a commercial boarding or training kennel, commercial breeder kennel, domestic charitable corporation kennel, personal kennel, or veterinary kennel, as defined in MGL c. 140, § 136A .

KENNEL INSPECTOR — The Town's Animal Control Officer, the Police Chief, or such other qualified party as may be designated by the Board of Selectmen.

KENNEL LICENSE — An annual license permitting a Kennel to operate within the Town, issued to a Kennel that has demonstrated compliance with the requirements of this Section.

LICENSE PERIOD — The time between January 1 and the following December 31, both dates inclusive.

- B. Licenses; Fees; Requirements; Violations.

- (1) No person shall operate a Kennel within the Town without first obtaining a Kennel License from the Town Clerk in accordance with the provisions of this Section. Possession of a Kennel License shall not demonstrate compliance with any other provision of the bylaws of the Town of Belmont.
- (2) The Town Clerk shall determine the amount of the non-refundable fee for a Kennel License for each License Period. The Town Clerk may charge an increased fee for applications for Kennel License renewals received after March 15 for that License Period.

(3)

The location and operation of any Kennel shall be appropriate for housing the number of dogs allowable under the terms of its Kennel License and may not be detrimental to the health and safety of dogs or persons.

- (4) All Kennels shall be operated in a safe, sanitary, and humane condition, as provided in MGL c. 140, § 137C.
- (5) No Kennel may keep more than 25 dogs on the premises at any time. Dogs that are on the premises for grooming, but not for overnight boarding, or, for medical or surgical treatment or observation shall not be counted in this number.
- (6) No Kennel may contract with security dog firms or other businesses to board protection or security dogs, or dogs in training to be protection or security dogs on the premises. A security dog kept on the premises for the Kennel's own security purposes is permitted.
- (7) Kennel operations, including the exercising of dogs, shall be in an indoor enclosed area, except that individual dogs may be exercised one at a time in a prescribed outdoor area.
- (8) Every Kennel shall at all times keep and maintain accurate records of the number and identities of all dogs kept on the premises, and the identities of persons who have purchased dogs from the Kennel.
- (9) In addition to the requirements of this Section, the provisions of § 60-200C and Article 6 of this Chapter shall apply to all Kennels.
- (10) Except as otherwise provided in this Paragraph, any violation of this Section shall result in a fine of \$50 per such violation and, for violations continuing 30 days past licensing deadlines, an additional fine of \$100 per such violation. A person maintaining a Kennel after the Kennel License therefor has been revoked, or while such Kennel License is suspended, shall be punished by a fine of not more than \$250. Violations shall be administered in accordance with the provisions of MGL c. 140, § 173A.

C. Application Process; License Issuance; Renewals.

- (1) Any person or entity seeking a Kennel License or renewal or reinstatement thereof shall complete and submit to the Town Clerk a Kennel License application, in a form prescribed by the Town Clerk. The application shall include a statement that the applicant acknowledges receipt of a copy the provisions of this Section and agrees to comply with all applicable provisions.
- (2) Upon receipt of a completed application, the Town Clerk shall so notify the Kennel Inspector who shall forthwith conduct an inspection of the applicant's Kennel as provided in Subsection (D). The Town Clerk shall also give notice of the application to direct abutters to the proposed Kennel location and provide such abutters 14 days to submit written comments on the application.
- (3) The Town Clerk shall review the completed application, all comments received within 14

days of the notice to abutter given pursuant to Paragraph (2), and the Kennel Inspector's report. The Town Clerk shall determine whether the proposed Kennel is in compliance with the requirements of this Section and MGL s. 140, §§ 137C and 137D and, if so, shall issue a Kennel License to the applicant. If the Town Clerk finds that the proposed Kennel is not in compliance with such requirements, the Town Clerk shall deny the application and state the reasons for such denial.

- (4) Any application for renewal of a Kennel License shall be submitted to the Town Clerk on or before March 15 for that License Period.
- D. Inspections. The Kennel Inspector, the Police Chief, the Board of Selectmen, or the Town's Animal Control Officer may at any time inspect a Kennel or cause the inspection of a Kennel to ascertain whether the Kennel complies with the requirements of this Section and applicable state statutes.
- E. Suspension or Revocation of Kennel License; Reinspections.
- (1) If the Town Clerk denies a Kennel License application or renewal application, the applicant or Kennel License holder may request a reinspection of the proposed Kennel after reasonably demonstrating to the Kennel Inspector that the proposed Kennel has been brought into compliance with the requirements of this bylaw and applicable state statutes. The Kennel Inspector shall thereafter, as soon as is practicable, reinspect the proposed Kennel and make a report to the Town Clerk, who shall, within a reasonable time, review the application in accordance with Subsection (C). The Town Clerk may set fees for reinspections performed pursuant to this Paragraph.
 - (2) If the Kennel Inspector, Police Chief, Board of Selectmen, or the Town's Animal Control Officer inspects or causes to be inspected a Kennel and, in the judgment of the person or entity that performed the inspection, the Kennel operator is not maintaining the Kennel in compliance with this Section and applicable state statutes, then the Kennel Inspector, Police Chief, Board of Selectmen, or the Town's Animal Control Officer shall, by order, revoke or suspend the Kennel License, in accordance with MGL c. 140, § 137C.
 - (3) If a Kennel License is suspended, the Kennel License holder may apply for reinstatement by requesting a reinspection of the Kennel after reasonably demonstrating to the Kennel Inspector that the Kennel has been brought into compliance with this Section and applicable state statutes, and that the License Holder has satisfied the terms of the suspension order. The Kennel Inspector shall thereafter, as soon as is practicable, reinspect the Kennel and make a report to the Town Clerk who shall, within a reasonable time, review the application in accordance with Subsection (C). The Town Clerk may set fees for reinspections performed pursuant to this Paragraph.
 - (4) If a Kennel License is revoked, the Kennel License holder may apply for a new Kennel License in accordance with Subsection C. The Town Clerk may set fees for reinspections performed pursuant to this Paragraph.
- F. Petitions to Declare a Kennel a Nuisance. Any group of 25 citizens may file a petition with the Board of Selectmen setting forth that they are aggrieved, or annoyed to an unreasonable extent, by one or more dogs maintained in the Town due to excessive barking or other conditions connected with a Kennel constituting a nuisance, as provided in MGL c. 140, § 137C. The Board

of Selectmen shall request that the Kennel Inspector investigate and provide a report for the parties' review prior to the public hearing provided in MGL c. 140, § 137C.